IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE FIFTEENTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

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WRIT PETITION NO : 18289 of 1999

Between:

K.R.Subhaji, S/o.K.Job, Social Studies B.Ed. Assistant,

A.E.L.High School, Koyakannapuram,

Koyyalagudem Mandal, West Godavari District.

..... PETITIONER

AND

1. District Educational Officer,

West Godavari District, Eluru.

2. Regional Joint Director of School Education,

Kakinada, East Godavari District.

3. Luthern Aided High School, K.Kannapuram,

rep. by its Correspondent, Sri P.Vidyasagar Samuel.

4. Chairman, Board of Secondary Education,

A.E.L.Church, Guntur.

5. Catherine Krupamma, W/o.C.Joseph,

B.Ed. Assistant, Luthern Aided High School,

Koya Kannapuram, West Godavari District.

6. Prl. Secretary to Govt., Education Dept.,

Govt. of A.P., Hyderabad.

(R.6 is impleaded as per Court order

dt.06-08-2004 in W.P.No.8820 of 1998 and batch).

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ or order or direction, especially one in the nature of Mandamus: (i) declaring the proceedings of the respondent No.4 transferring the petitioner to Luthern High School, Bhimavaram, from Luthern High School, Koya Kannapuram, through proceedings dated
28-08-1998 of the 4th respondent as illegal, arbitrary and without jurisdiction; (ii) to compel the respondents 1 and 2 to take action against respondents 3 and 4 for transferring the petitioner to Bhimavaram with *mala fide* intention of depriving him of his salary and other benefits;
(iii) compel the respondents to pay salary and other allowances treating the petitioner as B.Ed. Social Studies Assistant at K.Kannapuram without any break.

Counsel for the Petitioner: MR. V.JOGAIAH SARMA

Counsel for Respondents 1, 2, 4 and 6: GOVERNMENT PLEADER FOR SCHOOL EDUCATION

Counsel for Respondent No.3: MR. V.JAGAPATHI

Counsel for Respondent No.5: MR. J.JAYANAND

The Court made the following:

ORDER:

This writ petition is filed seeking a Mandamus declaring the proceedings of the fourth respondent dated 28-08-1998 transferring the petitioner from Lutheran High School, Koyakannapuram, Koyyalagudem Mandal, West Godavari District to Lutheran High School, Bhimavaram, West Godavari District as arbitrary and illegal and further, to compel respondents 1 and 2 to take action against respondents 3 and 4 for transferring the petitioner to Bhimavaram with a *mala fide* intention of depriving him of his salary and other allowances etc.

It is the case of the petitioner that he was working as B.Ed., (Social Studies) Assistant at Lutheran High School, Bhimavaram till he was transferred to Koyakannapuram on 21-06-1995. The fifth respondent and her husband are working in the schools under the management of Lutheran Church. They are working as School Assistants. The husband of the fifth respondent became Head Master of Lutheran High School, Bhimavaram, on or after 01-05-1999. The fifth respondent was working at Sakhinetipalli, East Godavari District and she was transferred and posted to Lutheran High School, Bhimavaram. According to the petitioner, there are

only four Social Studies B.Ed., Assistant posts at Lutheran High School, Bhimavaram. Already, there are four Social Studies B.Ed., Assistants working in the school. There was no provision for accommodating the fifth B.Ed., Social Studies Assistant at Lutheran High School, Bhimavaram. The transfer orders of the fifth respondent were not approved by the District Educational Officer, West Godavari District, Eluru and the Regional Joint Director of School Education, Kakinada, East Godavari District. Because of illegal transfer, the aid was not granted to the post occupied by the fifth respondent. Therefore, she filed Writ Petition No.8820 of 1998 and obtained interim direction for payment of salary for the period from 06-03-1997 to 31-03-1998. The salary was paid to her as per the orders passed by this Court. The post held by the petitioner was admitted to be grant-in-aid i.e. at Koyakannapuram. With a view to cause harm to him, the fifth respondent began to maneuver to get him transferred to Bhimavaram in her place. She herself was in unaided post and there was difficulty for her for payment of salaries. When attempts are being made to get him transferred to Bhimavaram, he filed O.S.No.578 of 1998 on the file of the Principal Junior Civil Judge, Kovvur, West Godavari District on 31-08-1998 and obtained orders of injunction restraining the Management from transferring the petitioner. He was continuing to work at Lutheran High School, Koyakannapuram and his salaries were paid by the authorities. On the pretext that the fifth respondent was not paid her salaries, she filed W.P.No.36551 of 1998. Interim order was passed on 09-07-1999. A counter affidavit is filed by the petitioner in the said writ petition seeking for dismissal of the same. The Management cannot pass illegal orders affecting the rights of its employees. If the Management commits irregularities, there is power vested in the Educational authorities to take action under the provision of Section 24 of the A.P. Education Act, 1982. The sum and substance of the petitioner's contention is that his transfer from Koyakannapuram to Bhimavaram itself was illegal and even the transfer of the fifth respondent from Sakhinetipalli to Bhimavaram was also illegal and therefore, since the petitioner cannot join at Bhimavaram as there is no vacancy, the respondents ought to have permitted him to attend to duties at Koyakannapuram. Such a course was not adopted by the respondents. Therefore, the transfer of the petitioner from Lutheran High School, Koyakannapuram to Lutheran High School, Bhimavaram, is arbitrary and illegal.

On behalf of respondents 1 and 2, a detailed counter affidavit has been filed denying the allegations made by the petitioner.

Be that as it may, though the petitioner was transferred from Koyakannapuram to Bhimavaram, he did not join at Bhimavaram. However, after conducting some enquiry by the Department, he was again permitted to join duty at Koya Kannapuram on 31-08-2004. Therefore, there was no necessity to adjudicate upon as to the legality or illegality of the transfer since it is submitted by the learned Counsel for the petitioner that such an exercise was done by the Department itself and an enquiry report was submitted to the authorities concerned.

In view of the above, I am of the considered opinion that the writ petition has become infructous. However, if the petitioner has any grievance as to treating the period of his service from 01-09-1998 to
31-08-2004 for the purpose of salaries, increments, promotion etc., he is at liberty to make a detailed representation before the respondents, and the respondents are directed to entertain the same and pass appropriate orders as per law within a period of three months from the date of receipt of this order.

With the above direction, the writ petition is disposed of. No order as to costs.

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C.V.RAMULU, J

15th June, 2005.

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ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1. The District Educational Officer, West Godavari District, Eluru.

2. The Regional Joint Director of School Education,

Kakinada, East Godavari District.

3. The Correspondent, Luthern Aided High School, Koyakannapuram,

Koyyalagudem Mandal, West Godavari District.

4. The Chairman, Board of Secondary Education,

A.E.L.Church, Guntur.

5. The Principal Secretary to Government, Education Department,

Government of Andhra Pradesh, Hyderabad.

6. Two CCs to the Government Pleader for School Education,

High Court Buildings, Hyderabad (O.U.T).

7. Two CD copies.